

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BANK OF AMERICA, N.A.,

Plaintiff,

-against-

APOLLO ENTERPRISE SOLUTIONS, LLC, APOLLO
ENTERPRISE SOLUTIONS, INC., and MORIAH
PARTNERS, LLC,

Defendants.

Civ. Action No.: 10-5707 (DLC)

**PLAINTIFF BANK OF AMERICA N.A.'S DIRECT TESTIMONY
DEPOSITION DESIGNATIONS OF G. CHRISTOPHER IMREY**

Pursuant to the Court's August 27, 2010 Order, plaintiff Bank of America, N.A., ("Bank of America" or the "Bank") respectfully submits the following deposition testimony it offers as substantive evidence in the hearing on its motion for a preliminary injunction scheduled for October 14, 2010. The Bank intends to offer the deposition testimony of Mr. G. Christopher Imrey, who is a representative of the defendants Apollo Enterprise Solutions, LLC and Apollo Enterprise Solutions, Inc. (collectively, "Apollo"). A brief synopsis, with citation to the deposition transcript, for the testimony of Mr. Imrey is as follows (with a copy of relevant deposition transcripts in the schedules submitted herewith).

SYNOPSIS OF DEPOSITION DESIGNATION OF G. CHRISTOPHER IMREY

Excerpts of the Transcript of the Deposition of G. Christopher Imrey, dated September 23, 2010 ("Imrey Depo.") are attached hereto as Schedule A.

Mr. Imrey will testify about the negotiation of the Agreement, and the course of performance of the Agreement between Bank of America and Apollo between April 2006 and November 2009. Mr. Imrey's testimony will specifically explain Apollo Enterprise Solutions'

"IDS Pay", "IDS Collect" and "IDS Recover" tools and how these tools comprise the "Apollo IDS Self-Settlement" product as negotiated in the Agreement. Mr. Imrey's testimony will also establish Apollo Enterprise Solutions' billing practices and how invoices to Bank of America were calculated from the beginning of the contractual relationship, through discussions for renegotiation of pricing arrangements, and also the new methods used by Apollo after the investment by Moriah to calculate "revised" invoices to Bank of America. Specifically:

- he is the founder and Chief Strategic Officer of Apollo and, prior to 2009, Apollo did not believe that the Agreement permitted Apollo to invoice the Bank for use of Apollo's services based upon "web hits." Imrey Depo. at 83:7-84:10. Mr. Imrey and his company were unaware that the Agreement could be interpreted to allow Apollo to charge the Bank based on web hits. (Imrey Depo. at 10:17-11:19; 20:16-22:14; 26:2-5; 83:7-84:19.)
- That Schedule C to the Agreement, wherein Apollo claims its right to invoice based on the number of "web hits"—was actually drafted by Apollo. (*Id.* at 37:12-39:17.)
- That Mr. Imrey identified Mr. Evan Pinchuk as the Apollo representative who reviewed the contract to determine if the Bank was in compliance (88:17-22), which is when Apollo allegedly discovered the clause referring to 170,000 web hits (84:11-84:19).
- Moriah conducted an audit of the Bank's Agreement and other customers' contracts as a part of its takeover (*Id.* at 83:7-15, 84:4-19; 88:6 - 91:2.) The audit was conducted at the direction of Apollo's new management team from Moriah. (*Id.*; Pinchuk Depo. at 88:17-22.)
- It was only when Evan Pinchuk, who came in with the Moriah management, audited the Agreement that the new interpretation of web hits was "discovered." (Imrey Depo. at 84:11-19; 88: 17-22.)
- Mr. Imrey agrees that IDS Pay is intended to be used by current customers. (Imrey Depo. at 45:2-7.)
- Mr. Imrey explained in his deposition that Bank of America has been charged six cents a web hit for web hits over 170,000 but that calculation is not supported by the Agreement. (Imrey Depo. at 84:20-85:15)
- Mr. Imrey confirmed at his deposition that Apollo's contracts were made available to Moriah to review for due diligence purposes prior to Moriah's investment and Mr. Pinchuk agreed. (Imrey Depo. at 88:6-89:4; Pinchuk Depo. at 31:7-33:9.)
- The definition ostensibly relied upon is no longer available on Wikipedia. (Imrey Depo. at 81:19-25).

**DESIGNATIONS OF THE SEPTEMBER 23, 2010
DEPOSITION TESTIMONY OF MR. G. CHRISTOPHER IMREY**

TESTIMONY FROM	TO
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Dated: New York, New York
September 30, 2010

HOLLAND & KNIGHT LLP

By: /s/ Richard Raysman

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SCHEDULE A

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 Civil Action No. 10-5707 (DLC)

-----x
4 BANK OF AMERICA, N.A.,
5 Plaintiff,

6 -vs-

7 APOLLO ENTERPRISE SOLUTIONS, LLC,
8 APOLLO ENTERPRISE SOLUTIONS, INC.,
9 and MORIAH PARTNERS, LLC,
10 Defendants.
11 -----x

12 Videotape deposition of G.

13 CHRISTOPHER IMREY, taken by the
14 Plaintiff, at the law office of
15 Whatley Drake & Kallas, LLC, 1540
16 Broadway, New York, New York, on
17 September 23, 2010, at 10:13 a.m.,
18 before Robert M. Levine, a Shorthand
19 Reporter and Notary Public of the
20 State of New York.

21 ROSENBERG & ASSOCIATES, INC.

22 Certified Court Reporters & Videographers

23 425 Eagle Rock Ave., Suite 201 575 Madison Ave.
24 Roseland, NJ 07068 New York, NY 10022
25 (973) 228-9100 1-800-662-6878 (212) 868-1936

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19 dweintraub@wdklaw.com

20

21 ALSO PRESENT:

22 JOE BARRION, Videographer

23

24

25

1
2 IT IS HEREBY STIPULATED AND
3 AGREED, by and between the attorneys for the
4 respective parties herein, that the sealing,
5 filing and certification of the within
6 deposition be waived; and sworn to before an
7 officer authorized to administer an oath, with
8 the same force and effect as if signed and
9 sworn to before the officer before whom said
10 deposition is taken.

11 IT IS FURTHER STIPULATED AND
12 AGREED that all objections except as to form,
13 are reserved to the time of trial.
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1 G. Christopher Imrey - September 23, 2010

2 THE VIDEOGRAPHER: This is the
3 video operator speaking, Joe Barrion, of
4 Rosenberg & Associates, 575 Madison Avenue,
5 New York, New York.

6 Today's date is September 23,
7 2010. The time on the video monitor is
8 10:13. We are here at the office of Whatley
9 Drake & Kallas, located at 1540 Broadway,
10 New York, New York, to take the videotaped
11 deposition of Christopher Imrey in the matter
12 of Bank of America, N.A. versus Apollo
13 Enterprise Solutions, LLC; Apollo Enterprise
14 Solutions, Inc.; and Moriah Partners, LLC, in
15 the United States District Court for the
16 Southern District of New York. Civil action
17 No. 10-5707 (DLC).

18 Will counsel please identify
19 yourselves and state whom you represent.

20 MS. MORRIS: Francesca Morris of
21 Holland & Knight LLP for plaintiff Bank of
22 America, N.A..

23 MS. CLARK-WEINTRAUB: Deborah
24 Clark-Weintaub from Whatley Drake & Kallas
25 for the defendants.

1 G. Christopher Imrey - September 23, 2010

2 THE VIDEOGRAPHER: Will the court
3 reporter please swear in the witness.

4 G. C H R I S T O P H E R I M R E Y, being
5 first duly sworn by the Notary Public (Robert
6 M. Levine), testified as follows:

7 THE REPORTER: Full name and
8 address for the record.

9 THE WITNESS: G. Christopher
10 Imrey, 3009 Rivoli, Newport Beach, California
11 92663.

12 EXAMINATION BY MS. MORRIS:

1 G. Christopher Imrey - September 23, 2010

10 Q. You are the founder of Apollo
11 Enterprise, LLC?

12 A. Apollo Enterprise Solutions, LLC.

13 Q. When was that founded?

14 A. In January of 2003.

15 Q. And what was the capitalization at that
16 time?

17 A. I put the first million dollars in
18 myself. And then investor money.

19 Q. What was your ownership of Apollo
20 Enterprise Solutions, LLC?

21 A. At its founding I owned 100 percent.

22 Q. And --

23 A. And --

24 Q. Sorry. Go ahead.

25 At the time it was sold, what was your

1 G. Christopher Imrey - September 23, 2010
2 percentage?

3 A. I don't understand the question.

4 Q. So what is the ownership of Apollo
5 Enterprise Solutions, Inc.?

6 A. I can't give you a detailed description
7 of the cap. I don't know.

8 Q. What's your position in Apollo
9 Enterprise, Inc.?

10 A. I am founder and chief strategy
11 officer.

12 Q. Do you have any ownership?

13 A. Yes.

14 Q. How much is your ownership?

15 A. It's depending upon incentives and
16 bonuses. It varies.

17 Q. Do you own any shares in the company?

18 A. Yes.

19 Q. How many shares do you own?

20 A. About 25 million.

21 Q. How many shares are there?

22 A. I couldn't tell you the exact figure.

1 G. Christopher Imrey - September 23, 2010

21 Q. Apollo Enterprise entered into a
22 contract with Bank of America?

23 A. No.

24 Q. What was the arrangement with Bank of
25 America?

1 G. Christopher Imrey - September 23, 2010

2 A. Apollo Enterprise Solutions, not Apollo
3 Enterprise entered into a contract with Bank of
4 America.

5 Q. What is Apollo Enterprise?

6 A. I don't know. You were the one who
7 referenced it.

8 Q. Well, when I meant Apollo Enterprise
9 Solutions, AES entered into a contract with Bank of
10 America. When was that?

11 A. It was in April 2006.

12 Q. How did that relationship come about?

13 A. I don't understand the question.

14 Q. Did you first contact Bank of America
15 regarding providing online services for them?

16 A. No.

17 Q. Did someone at Bank of America contact
18 Apollo Enterprise Solutions regarding providing
19 services for Bank of America?

20 A. I don't know.

21 Q. Who would know?

22 A. Our senior VP of sales.

23 Q. Who is that?

24 A. Ed Dewispelare.

25 Q. Is he still with Apollo Enterprise

1 G. Christopher Imrey - September 23, 2010

2 Solutions?

3 A. No.

4 Q. At what time did you first have contact
5 with Bank of America?

6 A. Ed called me and said that Bank of
7 America reached out to him looking for a Web-based
8 collection solution. And had set up a meeting with
9 Julie Gonzales in Phoenix in 2005.

10 Q. Do you remember when in 2005 that was?

11 A. October 2005.

12 Q. Did you go to a meeting in Phoenix?

13 A. Yes.

14 Q. What happened at the meeting in
15 Phoenix?

16 A. We presented our solution.

17 Q. What was the solution?

18 A. A Web-based collection application that
19 provided multi-channel services.

20 Q. What services did it provide?

21 A. I just described it.

22 Q. What were the multi-services that were
23 provided?

24 A. The ability to contact debtors or
25 customers via IVR letters, E-mail, text, et cetera.

1 G. Christopher Imrey - September 23, 2010

2 Q. When you say the ability to contact,
3 the online service sends out that contact?

4 A. The system has, yes. The system can do
5 it.

6 Q. Does the system do that for Bank of
7 America?

8 A. No.

9 Q. What other multi-services were
10 presented at that meeting in October 2005?

11 A. Real-time decisioning. Credit bureau
12 retrieval. And parsing, scoring. Decisioning.

13 Q. The real-time decisioning, what does
14 that involve?

15 A. It involves the real-time decision
16 engine that is incorporated to the software. That
17 presents the offers and the work flow and the look
18 and feel of the Web site to the customer.

19 Q. How is the decision reached before it's
20 presented to the customer?

21 A. It's calculated based on a set of
22 rules.

23 Q. Where do the rules come from?

24 A. They are configured in the system and
25 programmed by engineers.

1 G. Christopher Imrey - September 23, 2010

2 Q. Who provides the parameters of those
3 programs?

4 A. Depends. In the case of Bank of
5 America it was all Bank of America's specifications.

6 Q. Does the Bank of America site contain
7 real-time decision-making?

8 A. Yes.

9 Q. And all of the parameters for that come
10 from Bank of America?

11 A. Yes.

12 Q. You mentioned also the credit bureau
13 facility.

14 What is that?

15 A. The system's ability to retrieve
16 information from the credit bureaus or any third
17 party entity and parse that information and
18 incorporate it into the decision process and/or the
19 work flow.

20 Q. For Bank of America is that facility
21 used?

22 A. Yes.

23 Q. In what way is it used?

24 A. When a customer logs in, Bank of
25 America customer, the system will retrieve an

1 G. Christopher Imrey - September 23, 2010
2 authentication score from Experian. And if the
3 score is above a certain threshold, then the
4 customer is authenticated and allowed into the
5 system.

6 Q. What happens if it's below a certain
7 threshold?

8 A. The customer is not allowed access to
9 the system.

10 Q. What's the purpose of that?

11 A. For multi-factor authentication.

12 Q. For multi?

13 A. Multi-factor authentication.

14 Q. Multi-factor. What are the other
15 factors?

16 A. I don't understand the question.

17 Q. You said it's for multi-factor
18 authentication.

19 A. Yes.

20 Q. Explain what multi-factor means?

21 A. It's what you have and what you know.
22 An example of multi-factoring. So you have to have
23 more than one level of authentication.

24 Q. What other levels of authentication are
25 there?

1 G. Christopher Imrey - September 23, 2010

2 A. Single factor identification.

3 Q. What does that involve?

4 A. One element of authentication.

5 Q. In the case of Bank of America does it
6 use single factor authentication?

7 A. No.

8 Q. Bank of America uses multi-factor
9 authentication?

10 A. Yes.

11 Q. One of those factors is through the
12 Experian credit bureau; is that right?

13 A. No.

14 Q. What are the factors that Bank of
15 America uses for authentication?

16 A. What you have, which is your card
17 number, and what you know, which is your Social
18 Security number and your street address and your
19 name.

20 Q. And each of those elements is put in in
21 order to authenticate a customer?

22 A. Yes. Along with the zip code, I
23 believe.

24 Q. And the Web site itself accesses
25 Experian. And only let's them in if they have a

1 G. Christopher Imrey - September 23, 2010
2 credit score above a certain number?

3 A. No.

4 Q. What's the Experian part of it then?

5 A. It sends the what you know information
6 to Experian. And if it matches and passes an
7 authentication score, then you're allowed into the
8 system.

9 Q. Then authentication score is actually
10 where the information provided agrees with the
11 information that Experian had; is that correct?

12 A. That's correct.

13 Q. What other of the multi-factors? Is
14 that all of it? All of it is just information
15 provided and then matched up against Experian?

16 A. Yes.

17 Q. And that's for --

18 A. An account number matched up against
19 the bank's information.

1 G. Christopher Imrey - September 23, 2010

2 Q. Have you dealt with the Dealer
3 Financial Services people?

4 A. I don't understand the question.

5 Q. Do you know Betsy Williams?

6 A. Yes.

7 Q. Do you know that she works for Dealer
8 Financial Services?

9 A. Yes.

10 Q. Do you know Blesita Tanovitch?

11 A. Yes.

12 Q. Do you know she works for Dealer
13 Financial Services?

14 A. Yes.

15 Q. Do you speak with them about the use of
16 Dealer Financial Services' Web site?

17 A. I'm sorry. I don't understand the
18 question.

19 Q. Do you speak with Blesita Tanovitch and
20 Betsy Williams?

21 A. I don't understand the question.

22 Q. Do you understand what "speak" means?

23 A. Yes.

24 Q. So using the telephone, do you pick it
25 up and talk to Betsy Williams?

1 G. Christopher Imrey - September 23, 2010

2 Have you done that?

3 A. I don't know what reference period.

4 Today? No.

5 Q. Ever.

8 A. Right. Maybe it's the English versus
9 American phrase. Have I ever? I didn't understand
10 the question. What are you trying to ask? Have I
11 ever spoken to them?

14 A. Or do I speak with them regularly?

15 Q. Have you ever?

16 A. Or do I have monthly conference calls
17 with them. Or, I mean -- I don't understand the
18 question.

19 Q. Apollo Solutions does have conference
20 calls with the Bank of America people regarding the
21 use of the Web site regularly?

22 A. No.

23 Q. It does not have Friday conference
24 calls with people at Bank of America to discuss the
25 use of the Web site?

1 G. Christopher Imrey - September 23, 2010

2 A. No.

3 Q. Am I using the wrong name?

4 Is it because I didn't say Apollo
5 Enterprise Solutions?

6 A. Yes.

7 Q. Apollo Enterprise Solutions has regular
8 telephone calls every Friday to discuss the use of
9 the Web site?

10 A. I believe so.

11 Q. Were you ever involved in those
12 telephone calls?

13 A. No.

14 Q. You're not involved in them now?

15 A. No.

16 Q. Have you ever met with Betsy Williams
17 of Dealer Financial Services?

18 A. Yes.

19 Q. Have you ever met with Blesita
20 Tanovitch of Dealer Financial Services?

21 A. Yes.

22 Q. Do you know that Dealer Financial
23 Services uses My Easy Payment Web site?

24 A. Yes.

25 Q. Do you know how customers are

1 G. Christopher Imrey - September 23, 2010
2 authenticated for Dealer Financial Services' use of
3 the My Easy Payment Web site?

4 A. No.

5 Q. Do you know if there are other
6 departments that use the My Easy Payments Web site?

7 A. Currently?

8 Q. Currently.

9 A. No.

10 Q. No, you don't know?

11 A. I don't understand the question.

12 Q. You said no. But does that mean, no,
13 you don't know; or, no, nobody else uses the Web
14 site?

15 A. No, I don't know.

16 Q. What else was discussed at the October
17 2005 meeting?

18 A. Their existing solution.

19 Q. What were you told about that?

20 A. That it was a Web-based collections
21 portal. That it was very inflexible and hard-coded.
22 And that our design architecture and solution were
23 not hard-coded. And were configurable. And one
24 could program in rules and decision elements very,
25 very easily. And so Bank of America could control

1 G. Christopher Imrey - September 23, 2010
2 that process. So they became very excited about
3 working with Apollo.

4 Q. Who was at that meeting?

5 A. Julie Gonzales and Ed Dewispelare.

6 Q. And you?

7 A. And me.

8 Q. Just the three of you?

9 A. Hmm-hmm.

10 Q. Was anything else discussed at that
11 meeting?

12 A. I don't recall.

13 Q. Was pricing discussed at that meeting?

14 A. No.

15 Q. Was there a discussion at that meeting
16 about which customers would use the Web site?

1 G. Christopher Imrey - September 23, 2010

15 Q. I'm going to show you a document that
16 was marked yesterday at Ms. Gates' deposition. It's
17 Exhibit 3.

18 Do you recognize that document?

19 A. Yes. Actually, I'm sorry. There's an
20 E-mail on the top of this document. And I haven't
21 read through the entire document. So I can't say
22 that I recognize everything. I recognize the first
23 page, the E-mail. That's it.

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6 Q. Mr. Imrey, now that you've had a chance
7 to look at it, do you recognize that document? You
8 recognize the E-mail. Do you recognize the
9 attachment? And if it's any help to you, this came
10 from Apollo's file as I understand.

11 MS. CLARK-WEINTRAUB: It's my
12 understanding, as well.

13 A. I don't know.

14 Q. You don't know if that is the document
15 that was attached to the E-mail from Ed Dewispelare
16 to Mike Walker, cc'ing you and some other people?

17 A. Correct.

18 Q. On November 17, 2005, Ed sent you this
19 E-mail that is in front of you as Exhibit 3 to the
20 Gates deposition; is that correct?

21 A. I don't know. I don't know if this
22 version, this was.

23 Q. I'm not asking about that. I'm asking
24 about the E-mail. He sent you this E-mail?

25 A. Yes.

1 G. Christopher Imrey - September 23, 2010

2 Q. Was that the first time that you had
3 seen a draft of the Bank of America contract where
4 Apollo --

5 A. Yes.

6 Q. Assuming that this is the attachment
7 which is what it has been represented to us by your
8 counsel as presented to them by Apollo, this would
9 have been the first draft of the Bank of America
10 contract that came to Apollo Enterprise Solutions?

14 THE WITNESS: Please restate the
15 question.

16 Q. You said you can't be sure that this
17 attachment is the attachment that was for this
18 particular E-mail?

19 A. Correct.

20 Q. Is that true for every E-mail that you
21 see that is in a hard copy?

22 A. No.

23 Q. Do you keep electronic copies of
24 E-mails at Apollo Enterprise Solutions?

25 A. Yes.

1 G. Christopher Imrey - September 23, 2010

7 Q. If you could turn to the schedules in
8 this attachment. Schedule C, the servicing levels
9 is blank; is that correct? Schedule D.

12 MS. MORRIS: Schedule D, the
13 service levels. Then it says reproduced on
14 following pages.

15 A. Right.

16 Q. But there's nothing there.

17 A. Yes.

18 Q. And Schedule C, service fees and
19 training, do you know if that is the form that was
20 used in the final contract?

21 A. No.

22 Q. No, you don't know?

23 A. No. I recall that it was a different
24 schedule; not necessarily this Schedule C. And then
25 not necessarily this form.

1 G. Christopher Imrey - September 23, 2010

2 Q. Who negotiated the pricing for the
3 agreement between Apollo Enterprise Solutions and
4 Bank of America?

5 A. Myself and Ed Dewispelare.

6 Q. And who for Bank of America?

7 A. Julie Gonzales and Ahn Gates.

8 Q. If you could turn to page 8 of the
9 attachment there, 6.1.

10 A. Yes.

11 Q. It states that this agreement shall
12 apply and remain in effect from the effective date
13 and perpetually thereafter unless terminated
14 pursuant to the following section; is that right?

15 A. Yes.

16 Q. Was that the final agreement for the
17 term of the contract?

18 A. No.

19 Q. Do you know who suggested the change to
20 that?

21 A. It was mutually agreed upon.

22 Q. Do you know who first suggested the
23 change to that?

24 A. No. Actually, I believe it was the
25 bank, now that I think about it. Because they

1 G. Christopher Imrey - September 23, 2010
2 wanted to limit it to a two-year term.

3 Q. What did Apollo want?

4 A. Apollo wanted a five-year term.

5 Q. And you mutually agreed on a two-year
6 term with renewal?

7 A. Correct.

14 Q. Section 6.2 states, Bank of America may
15 terminate this agreement for its convenience; is
16 that correct?

17 A. Well, it says a lot more than that.

18 Q. Does it also say that?

19 A. Part of the first sentence says that.

20 Q. Does it say that Apollo Enterprise
21 Solutions can terminate for convenience?

22 A. No.

1 G. Christopher Imrey - September 23, 2010

4 Q. I'm going to show you what was marked
5 as Exhibit 1 at Ahn Gates' deposition yesterday and
6 ask if you recognize that document?

7 A. Yes.

8 Q. What is it?

9 A. This is a final version of the
10 financial service provider agreement signed by both
11 parties.

12 Q. And is that your signature on the front
13 page?

14 A. Yes.

15 Q. I'm going to show you another document
16 that has been marked Apollo 628 to 643. And ask if
17 if you --

18 MS. MORRIS: Actually, we need to
19 have that marked Exhibit 9.

1 G. Christopher Imrey - September 23, 2010

2 A. Yes.

3 Q. What is that document?

4 A. It's entitled, "Intelligent Debt
5 Settlement, IDS System Implementation, Statement of
6 Work."

7 Q. What was it used for?

8 A. This looks like a template that we
9 started from and describing a statement of work.

10 Q. The statement of work for Bank of
11 America's online payment project?

12 A. Yes. Well, you said Bank of America's
13 online payment project? I don't believe that is the
14 title of it.

15 Q. This is for the statement of work for
16 what became the application service provider
17 agreement; is that right?

18 A. Yes. I believe so.

19 Q. Was this statement of work ever
20 finalized?

21 A. I don't know.

22 Q. Do you know if there is a copy of this
23 statement of work?

24 A. I don't know.

1 G. Christopher Imrey - September 23, 2010

12 MS. MORRIS: I'm going to ask the
13 court reporter to mark this document as the
14 next exhibit which, I believe, is Exhibit 10.

15 (Document entitled, "Intelligent
16 Debt Settlement" marked Exhibit 10 for
17 identification as of this date.)

18 Q. Do you recognize that document?

19 Would you like to go off the record
20 while you read it?

21 A. No. It's not that many pages. Yes.

22 Q. What is that?

23 A. This is a more fleshed out version of
24 the Intelligent Debt Settlement IDS System
25 Implementation, Statement of Work.

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2 Q. And is this a document that was
3 prepared by Apollo Enterprise Solutions?

4 A. Yes.

5 Q. Can you turn to page 3 under number 2,
6 objective. The fourth subparagraph states, project
7 to be completed within the estimated costs levels
8 agreed to by both parties. See Exhibit B, project
9 financial model; is that right?

10 A. Yes.

11 Q. What is the project financial model?

12 A. The project financial model was a
13 delineation of the costs and charges that will be
14 incurred by Bank of America for installation,
15 configuration, licensing transactions.

16 MS. MORRIS: Can you mark that as
17 the next Exhibit 11.

18 (Document bearing production Nos.
19 Apollo 600 and 601 marked Exhibit 11 for
20 identification as of this date.)

21 Q. Do you recognize that document?

22 A. It seems to be a version of the
23 document.

24 Q. Of which document?

25 A. Exhibit B. Pricing financial model.

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2 Q. That's Exhibit B to the document that's
3 marked as Exhibit 10?

4 A. I'm not sure.

5 Q. Going back to page 3 in number 2, the
6 objective that refers to Exhibit B, quote, project
7 financial model, end quote; does it not?

8 A. Yes.

9 Q. And this document at Apollo 601 has at
10 the top of it, Exhibit B, project financial model?

11 A. Yes.

12 Q. Do you know if this document which has
13 been marked as Exhibit --

14 MS. CLARK-WEINTRAUB: 11.

15 Q. -- 11, is Exhibit B to the document
16 that is Exhibit 10 to this deposition?

17 A. It appears to be a version of it.

18 MS. MORRIS: I'm going to ask the
19 court reporter to mark the next exhibit which
20 is Exhibit 12.

21 (Copy of a PowerPoint
22 presentation marked Exhibit 12 for
23 identification as of this date.)

24 Q. Do you recognize that document?

25 A. Yes.

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2 Q. What is that?

3 A. This is a PowerPoint presentation that
4 was given to Julie Gonzales for presentment for her
5 internal group.

6 Q. And who gave that PowerPoint
7 presentation?

8 A. Who gave it to Julie Gonzales?

9 Q. Yes.

10 A. Oh, I think it was either myself or Ed.

11 Q. On the bottom of the first page and
12 actually on every page it says, February 22, 2006.

13 Do you recall if that was about the
14 time the presentation was given?

15 A. Yes.

16 Q. Yes, it was about that time?

17 A. When you say "presentation given," we
18 showed this to Julie Gonzales. We gave her the
19 presentation. And then, apparently, she internally
20 presented it within Bank of America. And I don't
21 know the specific date of her presentation so...

22 Q. What was the date of your presentation?

23 A. Around this time frame.

24 Q. At the bottom of the last entry on the
25 first page states, "The Apollo system incorporates

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2 bureau data and analytics in order to present
3 customers with intelligent payment or settlement
4 offers that best fit their current ability to pay."

5 A. Yes.

6 Q. As it is used now, does the Apollo
7 system incorporate bureau data and analytics to
8 present customers with an intelligent payment or
9 settlement offer?

10 A. I'm sorry. Repeat the question,
11 please.

12 Q. As the Apollo system is used now, does
13 it incorporate bureau data and analytics in order to
14 present customers with intelligent payment or
15 settlement offers?

16 A. Yes.

17 Q. What's the bureau data that is
18 incorporated?

19 A. Scores.

20 Q. What are the scores used for?

21 A. Scores are used for a variety of
22 features and functionality. They can be work flows.
23 Different sets of offers. Different look and feel
24 different trigger multi-life cycle events.

25 Q. Has Bank of America provided

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2 authorization to Apollo to access the scores of its
3 individual customers?

4 A. No.

5 Q. Are the scores used by Apollo to
6 develop an intelligent payment or settlement offer?

7 A. I don't -- Apollo doesn't offer any
8 settlement offers because Apollo is not a collection
9 agency or a licensed agent of the bank. Apollo
10 simply is a solutions provider.

11 Q. Who uses the scores from the bureaus to
12 develop an intelligent payment or settlement offer
13 to make to the customer?

14 A. The client.

15 Q. Bank of America?

16 A. No.

17 Q. Which client?

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13 A. Okay. All right.

14 Bank of America, from what we were led
15 to believe, incorporates bureau data as part of its
16 scoring and analytics and an account segmentation
17 and status codes.

18 Q. When Apollo Enterprise Solutions was
19 offering its services to Bank of America was Apollo
20 Enterprise Solutions offering to do those analytics
21 to present the customers with an intelligent payment
22 or settlement offer?

23 A. Well, the system is configurable. So
24 either, you know, the bureau data could be retrieved
25 by the bank passed to, the credit report could be

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2 passed to Apollo. The Apollo system can go retrieve
3 the credit report independently using the bureau
4 codes of the bank on behalf of the bank. Since
5 they're the owner of the credit report and have
6 permissible purpose to pull the credit report. The
7 credit report could be pulled by the bank and used
8 to compile and segment accounts. And then, you
9 know, give a code of 1 to 5, for example.

10 And then, you know, the accounts, you
11 know, everybody -- that's a 2, had some bureau data
12 or analytics to used to calculate what a 2 is. And
13 then the system could be configured to go present
14 different offers to somebody's who's categorized as
15 a 2.

16 So there's many different methods of
17 implementation that can be used. And so it's simply
18 configurable.

19 Q. Which method is used now?

20 A. I believe that Bank of America
21 incorporates bureau data or they pull the credit
22 report themselves. They do not pass it to us. And
23 they use it to mark and segment accounts internally.

24 Q. Moving to page 3.

25 A. Yes.

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2 Q. IDS Pay. It states, "The IDS Pay," and
3 then the trademark symbol there, "System, provides a
4 secure platform for customers to pay their current
5 accounts on line."

6 Is that what it says?

7 A. Yes.

8 Q. Is that your understanding of IDS Pay?

9 A. Yes.

10 Q. IDS Collect. The IDS Collect system
11 uses account history scoring an analytic and bureau
12 data to provide intelligent offers to customers to
13 self-secure their delinquent accounts with
14 individualized payment terms.

15 Is that your understanding of IDS
16 Collect?

17 A. Not exactly.

18 Q. What is your understanding of IDS
19 Collect?

20 A. Well, it can use account history
21 scoring and analytics. And can use bureau data. So
22 those are options at the customers, you know, or the
23 clients -- sorry. The client's request.

24 Q. When IDS Collect is not using those
25 options, what is it doing?

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2 A. It decisions the customers to determine
3 their status. And then presents options that don't
4 use account history, scoring and analytics. But the
5 IDS Collect refers to an account in a status which
6 is greater than 30 days delinquent and less than a
7 pre-charge off.

8 IDS Recover refers to an account that
9 is charged off or post-180 days. So the difference
10 between Pay, Collect and Recover is the status of
11 the customer and the level of delinquency, which
12 system is being used.

13 Q. And what do you rely on for your
14 definitions?

15 A. The industry standard definitions.
16 Federal Reserve Board definitions, government
17 agencies, credit bureau reporting, and fact
18 definitions.

19 Q. And do those different definitions
20 include the term IDS Collect or just collect?

21 A. Well, just collect or collections.

22 Q. And do they include the term IDS
23 Recover or just recover?

24 A. Recover or charge-off or recovery.

25 Q. On page 18 in the box, the phrase in

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2 there says, "The Apollo IDS self-settlement system
3 authenticates the user and pulls a real-time credit
4 report."

5 A. Yes.

6 Q. What is the Apollo IDS Self-Settlement
7 system?

8 A. That's the application.

9 Q. Which application?

10 A. The Intelligent Debt Solution system.

11 Q. So the Intelligent Debt Solution,
12 Intelligent Debt Solution system authenticates the
13 user?

16 A. No. The Apollo Intelligent Debt
17 Solution Self-Settlement system authenticates the
18 user.

19 Q. How is the self-settlement system
20 different or added to the term IDS?

23 THE WITNESS: Repeat the
24 question, please.

25 Q. What does self-settlement mean?

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2 A. Self-settlement means that a customer
3 or end-user interacts with any type of electronic
4 device and does not involve a human.

5 Q. Does the Apollo IDS system as used for
6 Bank of America, pull a real-time credit report when
7 a customer logs on?

8 A. No. But it does pull the Experian
9 authentication scores.

10 Q. Page 19 the IDS decision engine. And
11 there's an explanation that says, "The IDS decision
12 engine computes, calculates and generates multiple
13 settlement offers for the customers based on the
14 customer's current ability to pay and customer's
15 account history."

16 Did I read that correctly?

17 A. Yes.

18 Q. Does the IDS decision engine do those
19 things for Bank of America?

20 A. It does portions of those things.

21 Q. Which portions of those things does it
22 do?

23 A. The decision engine computes,
24 calculates and generates multiple offers for the
25 customer. And it's not necessarily based on the

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2 customer's current ability to pay. But it is based
3 upon the customer's account history.

4 Q. And that information that is used to
5 compute that is provided by Bank of America; is that
6 right?

7 A. Yes.

8 Q. The IDS parser on page 19 is described
9 as, quote, The IDS parser, extracts and calculates
10 user defined credit report items and up to the
11 minute account data. The IDS parser then submits
12 both the calculated bureau and account data to the
13 IDS decision engine for decisioning intelligence,
14 end quote.

15 Did I read that correctly?

16 A. Yes.

17 Q. Does the Apollo Web site provide that
18 service for Bank of America?

19 A. Yes, in part.

20 Q. In what part?

21 A. Well, the parser extracts and
22 calculates the credits, the authentication scores.
23 It brings in up to the minute another account data.
24 Submits those to the decision engine for
25 authentication. Once the customer's authenticated,

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2 the account data is submitted to the decision engine
3 for decisioning intelligence.

4 Q. What is decisioning intelligence?

5 A. Decisioning intelligence is the ability
6 to create a decision and to present different offers
7 for different types of accounts and different
8 statuses, different work flows.

9 Q. Okay.

10 A. Different presentment of screens or
11 pages and different content. Look and feel. Layout
12 of pages. And also, you know, pre or
13 post-processing of accounts.

14 Q. And all of that is determined by Bank
15 of America, if at all?

16 A. Yes, yes.

19 I'm going to show you what was marked
20 as Exhibit 2 at Gates' deposition. And I realize
21 maybe you have seen that declaration before.

22 Have you seen that declaration before?

23 A. Yes.

24 Q. Attached to it there are four exhibits
25 which are described in paragraph 4 of red line

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2 versions of the agreement.

3 A. Yes.

4 Q. Do you agree that those are red-lined
5 versions of the agreement?

6 A. Which exhibits are you referring to?

7 Q. Exhibit 1, 2, 3 and 4?

8 A. Yes.

9 Q. In Exhibit 1, 2, that declaration on
10 page 7, there's a red-lined change to paragraph 6.2.

11 Do you know who made that change?

12 A. I don't know if this would have been
13 either Ahn Gates or Corinne Miller.

14 Q. Do you know whether Ahn Gates or
15 Corinne Miller suggested a termination fee should be
16 inserted?

17 A. This is pretty standard if there's a
18 termination prior to the end of the contract.
19 That's usually what is used to calculate it. And it
20 looks like this one seems to be one of the
21 mid-interim revisions because we, Bank of America
22 had put, wanted a two-year term. And so this is
23 1/24th, which would have been and then deleted is
24 36th, okay. So the revision says deleted 1/36th.
25 So that the contract either goes in perpetuity where

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2 there's no termination, or it has an effective
3 termination date. And then either party can choose
4 to or elect to renew the contract. This version had
5 a three-year period for the termination of the
6 contract.

7 Q. You know, I'm going to stop you
8 because my question was do you know who asked for
9 the termination fee to be inserted into the
10 contract?

11 A. Well, this is a modification from 36
12 which would correspond to a termination in the
13 middle of the contract of a three-year agreement.

19 Q. Did Apollo ask for a termination fee?

20 A. It was pretty standard that termination
21 fee would be negotiated.

22 Q. Let's go back to Exhibit 3 to the Gates
23 deposition on page 8.

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5 Q. On page 8 is the attachment at 6.2.

6 Would you agree there is a no
7 termination fee in 6.2 in that contract?

8 A. Yes.

9 Q. Do you know who suggested that the
10 termination fee should be inserted into the
11 contract?

12 A. No. And now that I see this language,
13 I do recall that this was, a 6.2 was a clause that
14 Bank of America which is a nonstandard clause that
15 they could terminate for convenience. And
16 typically, if the bank were, if we were to strike
17 that out and say we'll remove it entirely, 6.2, the
18 bank may come back with an offer to mitigate that
19 sentence with an offer to a termination fee if they
20 do decide to terminate for convenience. So it may
21 have been introduced by Bank of America as a
22 concession.

23 MS. MORRIS: I'm going to ask for
24 this to be marked as the next exhibit.

25 (Three-page document dated April

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2 4, 2006 marked Exhibit 13 for identification
3 as of this date.)

4 Q. This is taken from the electronic
5 version. The April 4, 2006 version of the red line
6 which is Exhibit 2 to the Gates declaration.

10 Q. And if you go to page 7, 6.1 and 6.2.

23 Q. Exhibit 2, it shows the red line
24 changes to those paragraphs.

25 A. Which page?

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2 Q. Page 7.

3 A. Page 7. Okay.

9 Q. If you look at Exhibit 13, you will see
10 at the top there are a list of changes that are made
11 to page 7. And as you suggested, there are some
12 changes here by Ahn Gates regarding the two and
13 three years!

14 Would you agree with me on that?

15 A. Yes.

16 Q. And then it states, page 7 inserted.
17 Corinne, quote, Bank of America shall also be
18 subject to a termination fee equal to one.

19 Would you agree that that shows that
20 Corinne Miller asked for that insertion?

23 A. I don't know if she asked for it.
24 Typically somebody would be documenting a change
25 that was discussed. So they may have agreed to it

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2 and then Corinne said, I'll insert the language or
3 Ahn agrees to it and she says I'll insert the
4 language.

5 So I couldn't tell you who requested
6 it. But Corinne was clearly the inserter of that
7 information. And if you look below, Ahn Gates
8 removes 36th. She changes it to 24th. So
9 therefore, they must have been in agreement to this
10 clause. Because they wouldn't be negotiating if she
11 was not agreed to. And if it was a request by
12 Apollo solely and not agreed to, it would have been
13 stricken. The entire sentence would not have a
14 revision on it in the middle of 36 to 24th. It
15 would have been stricken completely by Ahn Gates.

16 So the fact that she actually changes
17 the term, if you look at that date, the 4/7, she
18 changes the term from 3 to 2. And she changes the
19 36 to 24 to correspond with the term.

20 Q. So...

21 A. Thereby signifying that this must have
22 been something that they were negotiating together
23 and were in agreement at that time.

24 Q. So they were negotiating 6.1 and 6.2?

25 A. Yes. These are revisions to that

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2 paragraph.

3 What's interesting is that she makes a
4 revision of the --

8 MS. MORRIS: I am.

9 I'm going to ask the court
10 reporter to mark this as Exhibit 14.

11 (Document bearing production Nos.
12 Apollo 155 through 204 inclusive, marked
13 Exhibit 14 for identification as of this
14 date.)

15 Q. Do you recognize that document?

16 A. No.

17 Q. Did you say that you were one of the
18 people who negotiated the application service
19 provider agreement?

22 A. Yes.

23 Q. Did you see the various versions of it
24 that were exchanged?

25 A. No.

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2 Q. You did not?

3 A. Not every one of them. That's why you
4 say do I recognize this one? No. This is some
5 version. I don't know which one it is. And I don't
6 recognize it.

7 Q. Who else at Apollo was making changes
8 to the application service provider agreement?

9 A. Who else from whom?

10 Q. From Apollo Enterprise Solutions.

11 A. You mean who from Apollo was making
12 changes?

13 Q. Yes.

14 A. You said who else? I don't understand
15 the question.

16 Q. Well, sorry. We already saw that
17 Corinne was making changes and we discussed that.

18 Other than Corinne, who else was
19 reviewing the application service provider agreement
20 and making changes to it?

21 A. No one.

22 Q. If this document was produced to us by
23 Apollo Enterprise Solutions in this litigation,
24 would you agree that it came from Apollo Enterprise
25 Solutions file?

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2 A. I don't know.

3 Q. If you look on page -- these don't have
4 numbers, so I'm going to use the Bates numbers,
5 Apollo 161.

6 A. Yes.

7 Q. There's this 6.1 again. It appears
8 that there appears to be a deletion for the purposes
9 of this paragraph. The value of this contract shall
10 be deemed to be \$1 million.

11 Do you see that?

12 A. Yes.

13 Q. Do you remember the negotiations
14 regarding that million dollars?

15 A. Vaguely.

16 Q. What were the negotiations regarding
17 the million dollars?

18 A. I believe it was a number that was
19 picked in order to determine what the termination
20 fee would be equal to when you divided it by this.

21 So Bank of America terminated without
22 cause at its convenience in month 6, and roughly
23 3/4ths of the one million dollars would be due or
24 \$750,000 would be due.

25 Q. Do you know who proposed the million

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2 dollars?

3 A. No.

4 Q. If you turn to page Apollo 164 under
5 Section 9.2, to the right there is a comment, two
6 comments that say, "Mike?"

7 Who's Mike?

8 A. This appears to be Mike Walker. And it
9 appears to be he was the chief operating officer of
10 Apollo Enterprise Solutions. And this appears to be
11 a comment, probably by Corinne, to ask Mike about
12 the ability to comply with furnishing source code
13 escrow, or what versions were in source codes
14 escrow, or what versions or commitments to service
15 level commitments or SLAs. So she was probably
16 referring making a note to herself to discuss that
17 with Mike.

18 Q. If you turn to Apollo 172, under
19 paragraph 25.2.

20 A. Yes.

21 Q. Do you remember negotiations regarding
22 that paragraph?

23 A. Talking about 25.2 you said?

24 Q. 25.2. Yes.

25 Under confidentiality and information

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2 protection.

3 A. Yes. It even references. It says,
4 upon expiration or termination of this agreement --
5 the expiration refers to the contract expires, the
6 term of the contract expires must be mutually
7 renewed upon by both parties. The termination by --

8 Q. I'm going to have to stop you.

9 My question was do you remember
10 negotiations regarding that paragraph?

11 A. Not this specific revisions.

12 Q. So you don't know which party, whether
13 it was Apollo Enterprise Solutions or Bank of
14 America, N.A. that was asking for changes to 25.2?

15 A. Well, typically, if I was to look at
16 the comments in the margin as what was deleted, it
17 seems that Bank of America is deleted. And it says
18 the recipient, we have confidential information,
19 Apollo has confidential information, and the clients
20 have confidential information. And it's very
21 typical for us to want to protect our confidential
22 information. And it's a two-way street. And it
23 looked like this was a one-way street.

24 So it said that looks like the
25 revisions were asking that either party properly

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2 return to the discloser, rather than Apollo return
3 to Bank of America or Bank of America return to
4 Apollo. So that way it was a two-way street of
5 confidential information.

6 Q. Can you turn to Apollo 173.

7 A. Yes.

8 Q. Do you see changes to paragraph 25.6.

9 My question is do you recall
10 negotiations regarding paragraph 25.6?

11 A. No. I don't recall any specific
12 negotiations on 25.6.

13 Q. Do you recall negotiations on the 25.7?

14 A. No. I don't recall any specific edits
15 here.

16 Q. Would you agree that page Apollo 173
17 reflects edits of the 5.6 and 25.7?

18 A. Yes.

19 Q. The very last partial paragraph at the
20 bottom, 25.10.1, again, there's a comment Mike - all
21 make mutual.

22 Would you think that's another comment
23 from Corinne?

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2 A. Yes. It appears to be another question
3 that she has regarding this. Because this, again,
4 dealt with some operational components: Accept,
5 transmit, store or otherwise impact. And then it
6 talks about the Bank of America security
7 requirements. Which again, would be, she wanted to
8 ask Mike about. And she writes, "What are these?"
9 And then highlights it on the next page.

10 And actually going on to the next page
11 there are a few other notations under 25.1.2
12 questions. And again, also with Mike's name.

13 Do you again think those are from
14 Corinne?

15 A. Yes.

16 Q. Moving to Apollo 180 under paragraph
17 36.4.

18 Would you agree that that looks, again,
19 as if there is some negotiation going on and there's
20 a comment shown by the comment and to check with
21 legal?

24 A. This is almost illegible, this comment.
25 So I definitely want to check with legal. This is

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2 some revisions there. And then I think it looks to
3 me like it's a Corinne comment which says that Ahn
4 was going to check with legal regarding whether or
5 not this could be, whether this language is mutually
6 agreeable. But I can't even tell what it says.

22 MS. MORRIS: I'm going to ask the
23 court reporter to mark this document with the
24 next exhibit number 15.

25 (Document bearing production Nos.

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2 BANA-02837 and 02837-0002 marked Exhibit 15
3 for identification as of this date.)

4 Q. Mr. Imrey, the top E-mail does not
5 involve you. But the one underneath, do you
6 recognize that?

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7 Q. Do you recognize the E-mail, Tuesday
8 July 8, 2008 from Mike Walker?

9 A. Yes.

10 Q. Who is Jim Mahoney?

11 A. Jim Mahoney was our EVP of business
12 development. And was helping us to get the recovery
13 side accounts deployed.

14 Q. In the second paragraph Mike Walker
15 refers to open side settlements on credit card
16 accounts.

17 What does that term mean?

18 A. An open side is a pre-chargeoff or
19 collect account.

20 Q. Did you discuss this E-mail with Mike
21 Walker before he sent it out?

22 A. I don't recall.

23 Q. In July of 2008 you were the president
24 of Apollo Enterprise Solutions; is that right?

25 A. Correct.

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2 Q. And you were also the CEO at that time
3 or was there no separate CEO?

4 A. We became an Inc. right around this
5 time period. So I'm not sure. President of the
6 LLC. And we had no CEO. Typically not a CEO of an
7 LLC. I became president CEO of the Inc. on its
8 formation, around July or August of 2008.

9 Q. In this Mike Walker states, "Apollo
10 will not submit any invoice or request for payment
11 regarding open side settlements that have not been
12 completely agreed to in advance between Bank of
13 America and Apollo."

14 Did I read that correctly?

15 A. Yes.

16 Q. Do you recall any discussions at Apollo
17 Enterprise Solutions regarding that?

18 A. Yes.

19 Q. What was discussed?

20 A. Well, this was a result of a meeting
21 that we had had with Sharon Stockton, Julie Whitmore
22 via phone, Jim Mahoney, Alex Rhoads, Vinnie Iaconno
23 in Newark on June 26th, and John Verjanek. And John
24 Verjanek had found that there were recover accounts
25 going through the system. And when we presented

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2 that to the bank, Sharon Stockton said that there
3 were no recover accounts going through the system.

4 And then we were talking about pricing.
5 We had gone to the bank to ask for, to say that we
6 needed more money for the contract. Because we
7 needed to renegotiate the pricing because they
8 currently -- the volumes were increasing on the
9 site. The system was starting to reach capacity.

10 We had now turned on an additional line
11 of business, DFS. And we were also moving to add
12 redundancy in the system. We were asked by the bank
13 to include disaster recovery plans and business
14 continuity plans additionally to support more
15 sustained critical operations.

16 So the 10,500 a month that was used to
17 support some of the base, baseline components of the
18 system was grossly inadequate. Apollo had already
19 spent, you know, money and time and effort trying to
20 accommodate the limitations of that amount. And we
21 wanted to fix the pricing metrics that existed with
22 recover accounts and with collect accounts.

23 And this was, Sharon Stockton made a
24 comment about the open side settlements were a
25 program of a batch of specific account numbers that

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2 the bank was going to provide. And have the
3 customers then have the ability to receive
4 settlements and differentiated set of offers. And
5 she had said something about there was no decision
6 fee. And that we were not going to be charging her
7 a decision fee. And we said that absolutely there's
8 a decision fee that would be charged anytime a
9 decision is made in the system.

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20 MS. MORRIS: I'm going to ask the
21 court reporter to mark this as the next
22 Exhibit 16.

23 (Document entitled, "Bank of
24 America MEP/FIA Project" marked Exhibit 16
25 for identification as of this date.)

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2 Q. Mr. Imrey, do you recognize that
3 document?

4 A. Yes. This looks like a documentation
5 update of the Web site. Apollo maintains a current
6 copy of functionality. And typically when changes
7 are introduced into the system or new functionality
8 exists or new features that are added, a document
9 like this is generated to document what is occurring
10 on the site. This seems to be a portion of that.

11 Q. On page 2 of 16 it states, July 3,
12 2010; is that right?

13 A. Yes.

14 Q. On page 11 of 16 under summary of
15 functionality, the subheading is functionality for
16 current or past due accounts; is that correct?

17 A. Yes.

18 Q. Then there's a separate heading for
19 functionality for only past due accounts?

20 A. Yes.

21 Q. And on page 12, the last heading is
22 settlement options, open paren, for delinquent
23 customers, close paren; is that right?

24 A. Yes. This is my first time seeing this
25 document. But this is exactly what we would -- type

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2 of document, what happens for delinquent customers
3 and what type of settlement offers they would get
4 and how it's deployed.

5 Q. On page 15 of 16 under changes in this
6 release, the first box has settlements for some past
7 due accounts the MEP and FIA sites now provide
8 settlement offers for certain eligible past due
9 accounts. This is a new feature that did not exist
10 in the previous release; is that correct?

11 A. That's what the text says, yes.

12 Q. Was that correct?

13 A. Yes.

14 Q. Going back to page 12 under settlement
15 options...

16 A. Yes.

17 Q. The third paragraph states, "When an
18 account becomes delinquent it gets assigned to FIA
19 card services for internal recovery so every
20 delinquent account which is eligible for the
21 settlement options, see the FIA branding on the
22 remaining Web pages (even if it is a BAC account)."

23 What does that mean?

24 A. Well, this would be an example of a
25 decision being performed that says if the account is

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2 delinquent it gets assigned to FIA card services.
3 So this would now say that every delinquent account
4 which is eligible for settlement, which is another
5 decision, see the FIA branding on the remaining Web
6 page.

7 So if somebody logs into the Bank of
8 America branded site which would be
9 MyEasyPayment.com or MiPagoFacil.com, the site is
10 branded with Bank of America logos, colors, et
11 cetera. FIA card services is MyEasyPayment. And
12 MiPago FIA, MiPagoFacil, or something like that
13 which is the Spanish version of the generic branded
14 FIA site which is a different color. No logos. And
15 was used to allow customers that had a nonbranded
16 Bank of America credit card to log on and use the
17 site. The nonbranding would be, you know, Canadian
18 card. A Bank of Nova Scotia type card. A card that
19 is issued, appears to be issued by a branded entity.
20 Not Bank of America.

21 The name of FIA card services it says
22 was used for internal recovery. So it appears that
23 Bank of America would be calling the customer or
24 sending them a letter saying bank services is now
25 contacting you to receive payment for every

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2 delinquent account which is eligible for settlement
3 options.

4 So, in this case the decisioning,
5 decision engine was configured to change the
6 branding, look and feel of the content of the site.
7 To remove the Bank of America logo. Change the
8 color to a green which was the FIA card services
9 once a customer logged in for all the remaining
10 pages.

11 Q. So were all delinquent customers being
12 pushed onto those pages?

13 A. No. This is an example of the decision
14 engine having a different work flow for customers
15 that have a different status code. In the case of
16 an FIA customer who happens to be eligible for
17 settlement options, they would then be presented
18 with two options. And the branding would stay the
19 same as green and the content would be the FIA
20 branding.

21 In the case of a Bank of America
22 branded login, the decision engine would render the
23 screen to change to green, to the FIA. Would then
24 present the additional settlement options to make a
25 single discounted payment today to settle for less

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2 than the full amount or to make three equal payments
3 over time to add up to the full amount.

4 Q. In the last paragraph, it states, "For
5 the discounted settlement the bank provides a floor
6 percentage (specified separately for each account in
7 the table of delinquent accounts) then Apollo simply
8 ads 5 percent to it. This is all we can do in the
9 initial release of settlement options because the
10 bank is unwilling to share their rules for
11 calculating the discount. And they will not provide
12 the customer's full Social Security number which is
13 required for pulling an Experian credit report."

14 Is that what it says?

15 A. Yes.

16 Q. The settlement offer then was provided
17 by Bank of America; is that correct?

18 A. Well, this looks like an implementation
19 where the decision engine would calculate what is
20 shown on the screen. And this is a description of
21 the method of implementation for, you know, this
22 case it's using, the decision engine uses a file
23 that it is provided and each the file and account
24 number. So when a customer would log in, if the
25 customer's account number existed in the file so the

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2 decision engine will run and then would check the
3 table of delinquent accounts. And then they would
4 provide a floor percent in that table it appears.
5 And then the calculated items would be created by
6 adding, multiplying the floor percent times the
7 current balance. And then adding 5 percent, the 4
8 percent plus 5 percent times the current balance.
9 Which looks like they discounted single payment for
10 less than the phone number amount. So that was the
11 method that was used to implement this. It's one of
12 the various methods of using the decision engine to;
13 A, modify the work flow and the prior paragraphs.
14 To modify the content, the look and feel. And then
15 claimant elements that come from various parties; in
16 this case, the file provided by the bank. And then
17 perform additional logic to be, you know, increase
18 the 4 percent or some other number. Multiply and
19 calculate out those elements and then present them
20 onto the page. And it says this is all we can do in
21 the initial release of some options because the bank
22 is unwilling to share their rules for calculating
23 discount. So this was quite -- this is quite more
24 of a nonstandard implementation. Because typically
25 the rules for calculating the discount would be

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2 included and marked as part of the profile. So that
3 additional options and information that provided by
4 the customer of the Web site or third-party
5 providers such as Experian could be incorporated
6 into the offers.

7 But this was the first pass. So on the
8 first pass the data elements were, you know, didn't
9 include the Apollo system providing a pulling credit
10 report.

11 Oh, I notice that there's also
12 additional --

16 MS. MORRIS: I'm going to ask the
17 court reporter to mark this document as the
18 next Exhibit 17.

19 MS. CLARK-WEINTRAUB: Yes.

20 (Document bearing production Nos.
21 Apollo 852 and 853 marked Exhibit 17 for
22 identification as of this date.)

23 Q. Do you recognize this document?

24 A. No.

25 Q. Do you recognize the E-mail on Apollo

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2 853 from Adrian Gluck to you dated April 30, 2010?

3 A. Yes.

4 Q. Do you recognize the E-mail above it
5 from you to Adrian Gluck dated April 30, 2010?

6 A. Yes.

7 Q. In the first E-mail, Mr. Gluck asked
8 for the definition of Web hit. And in the second
9 you responded, "Evan will E-mail you the one used
10 with our lawyers." Is that correct?

11 A. Yes.

12 Q. How many different definitions of Web
13 hits were there?

18 Q. In your answer you said, "Evan will
19 E-mail you the one he used with our lawyers."

20 How many were there?

21 A. Oh, there's only one definition of Web
22 hit.

23 Q. Is that the definition used by Evan
24 Pinchuk in his E-mail to Adrian Gluck of April 30th
25 on the first page?

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2 A. Well, this appears to be a summary of
3 that. That is the definition of Web hit. And
4 there's an industry standard term.

5 Q. But that's not the definition of Web
6 hit from Wikipedia; is it?

9 A. Well, interestingly enough, Wikipedia's
10 definition of Web hit, this actually appears to be
11 what it used to be. It's been revised. It's been
12 changed mysteriously. And actually now refers to
13 not Web hits. It actually, there is no definition
14 of Web hit. It actually refers to another page
15 which was changed subsequent to the termination
16 notice from Apollo.

17 Mysteriously, Wikipedia has also
18 identified that in the revisions to that page of Web
19 hit, the person or persons identified had been
20 identified, had been characterized and identified by
21 Wikipedia as being rogue. They had basically been
22 barred from use of Wikipedia.

23 This was actually a real surprise when
24 I went and looked it up the other day. And so there
25 is no definition of Web hit on Wikipedia anymore,

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2 subsequent to I think it was January-February 2010.
3 Prior to January 2010, there was a definition of Web
4 hit on Wikipedia which is consistent with this
5 definition.

6 MS. MORRIS: I'm going to mark
7 this document which is your declaration in
8 this action, I think, next exhibit to the
9 this deposition.

10 (Declaration of G. Christopher
11 Imrey marked Exhibit 18 for identification as
12 of this date.)

13 Q. Do you recognize that document?

14 MS. MORRIS: Maybe we can just
15 stipulate that it was the declaration that
16 was filed in this action.

17 MS. CLARK-WEINTRAUB: Sure.

18 A. Yes.

19 Q. In paragraph 7, about halfway down you
20 state, "A Web hit is simply a request to a Web
21 server for a file." And then you cite to Wikipedia.

22 A. Yes.

23 Q. Are you saying that that definition is
24 no longer there?

25 A. Absolutely been modified and changed.

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7 Q. Did you, from 2006 to 2009, did Apollo
8 Enterprise Solutions invoice Bank of America based
9 on the number of its Web hits?

10 A. No.

11 Q. Why not?

12 A. We had no idea that there was that --
13 we didn't have any method of invoicing. And there
14 was no pricing components for, you know, invoicing
15 based on -- we had not reviewed the -- strike that.

16 Q. No, don't. Carry on.

17 A. I don't want to carry on in the
18 sentence, starting a fraction.

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4 THE WITNESS: We were unaware
5 that there was a pricing element in the
6 contract that allowed us to charge for Web
7 hits. And that the current site was
8 exceeding the limits that allowed us to
9 charge money for additional Web hits above
10 170,000.

11 Q. How did you become aware that there was
12 that pricing in the contract?

13 A. Well, when we, when -- I think it was
14 in the fall of 2009, we did a contract review of the
15 Bank of America contract. And at that point we
16 discovered that there was this clause of 170,000 Web
17 hits. And that anything over 170,000 Web hits was
18 billable or mutually through to be negotiated price,
19 I believe. It's in one of the exhibits.

20 Q. What are the costs for Web hits
21 exceeding \$170,000 a month?

22 A. Well, if you look at the base, the base
23 costs of, divide 170, 10,500 divided by 170,000
24 comes out to about 6 cents. So the original
25 contract was pricing the Web hit in about 6 cents a

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2 transaction, 6 cents per Web hit. And that basis
3 was used to calculate the value of the Web hits in
4 excess over 170,000.

5 Q. So it was a pure mathematical
6 calculation?

7 A. Yes.

8 Q. Based on the terms of the contract of
9 payments?

10 A. I'm sorry. Pardon?

11 Q. Based on the terms of the contract
12 payments under Schedule D? C. Sorry. Schedule C.

13 A. Yes. Based on, based on, yes. That's
14 correct. It's Exhibit B in one place and Schedule C
15 in another place.

16 Q. Are you familiar with the revised
17 invoices that were sent to Bank of America?

18 A. Yes.

19 Q. Do you know how Web hits was calculated
20 on those revised invoices?

21 A. Yes.

22 Q. How was it calculated?

23 A. Well, we have a program installed
24 called CertStats which tracks a variety of different
25 elements of activity on the Web site. And have

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2 archives of all the months of the sites since its
3 inception.

4 And so, when we originally discovered
5 that that 170,000 Web hits were being exceeded in
6 the fall of 2009, we started to perform an audit of
7 exactly how many Web hits were occurring on the
8 site. And, you know, when those, you know, when
9 those Web hits happened. And at what point did it
10 start exceeding the 170,000.

11 We went to the CertStats and went
12 through the archives. And had the data were stored
13 from archive in the audit, we, the CertStats
14 reports, there are many different terms that are
15 used in CertStats reports. And there's, you know,
16 there's a unique visitor. There's an authentication
17 or a login. There's a page view.

18 And so what you always do in the case
19 of trying to calculate resources that are consumed
20 by the site, the Web hits is the only method to
21 actually track that. And that's why it was put into
22 the contract originally, was to try and create a
23 threshold for when, you know, for how much, how many
24 servers were provisioned and how many processors and
25 RAM and bandwidth was provisioned for the initial

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2 contract increased or went over the threshold. Then
3 additional resources will be necessary.

4 We went and took a look at the actual
5 pages because we did not have the actual, you know,
6 Web hit in the CertStat report. But we looked at
7 the pages and determined that there's an average of
8 eight Web hits per page view. And then we
9 multiplied the page views, the number of page views
10 by 2, by 8, to calculate out the number of Web hits
11 that occurred. Some of the pages have more than
12 eight Web hits. Some of the pages have, you know,
13 less. But it's pretty much around eight Web hits
14 per page.

15 And then we took the CertStats reports
16 and archived every single month on every single
17 site. Because each one of the sites is tracked
18 independently and has its own statistics for
19 MiPagoFacil, Spanish again, and MyEasyPayment.

20 All of those were then used to sum up
21 and total up the total number of page views per
22 month of the combined sites. And then that was
23 multiplied by 8 to calculate the correct and
24 accurate number of Web hits.

25 Q. By correct --

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2 A. For the month.

3 Q. -- and accurate, you mean that you used
4 an average number to get to it?

5 A. Yes, yes.

6 Q. You said that there was an audit done
7 of the Bank of America contract in the fall of 2009;
8 is that correct?

9 A. Yes.

10 Q. Who was it who determined that there
11 should be that audit?

12 A. One of the standard things that we did
13 in this company, or actually, I think it was upon
14 the due diligence and funding of Apollo in June
15 2009. Did you say 2008 or 2009?

16 Q. I think you said 2009.

17 A. It was 2009, okay. Fall of 2009. So
18 upon the part of the due diligence was to go through
19 the contracts in detail. And, you know, Evan
20 Pinchuk was assigned the task of reviewing each one
21 to make sure that we are in compliance in making
22 sure bank compliance was in compliance.

23 Q. Did Moriah Partners review the
24 contracts of Apollo Enterprise Solutions before it
25 entered into the funding?

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2 A. I believe they were furnished copies of
3 them. I don't think that we had done an audit. I
4 know that we didn't do an audit.

12 Q. Prior to the audit in fall of 2009, had
13 Apollo Enterprise Solutions audited the agreement
14 with Bank of America before?

15 A. No.

16 Q. Were contracts with other customers
17 audited at the same time?

18 A. Yes.

19 Q. Were allegedly breaches found in those
20 contracts as well?

21 A. I don't understand the question.

22 Q. One of the allegations is that Bank of
23 America has exceeded its 170,000 Web hits a month.
24 And that that's a breach of the contract.

25 In doing the audits of Apollo

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2 Enterprise Solutions, other customers, were issues
3 found in those contracts as well?

4 A. Yes.

5 Q. In all of them?

6 A. No.

7 Q. How many were audited?

8 A. I don't recall.

9 Q. How many customers are there?

10 A. I don't know.

11 Q. Ballpark?

12 A. Six, eight.

13 Q. Were less than eight of them audited?

14 A. I don't know.

15 Q. Were less than all the audits found
16 problems?

17 A. Repeat the question, please.

18 Q. Were all the audits that were done of
19 their problems with the contracts for all of them?

20 A. No.

21 Q. Were there problems with the contracts
22 for half of them?

23 A. No.

24 Q. Were there problems with the contracts
25 for less than half of them?

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2 A. Yes.

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19 MS. MORRIS: Mr. Imrey, I'm going
20 to ask the court reporter to mark this
21 collection of documents as the next exhibit.

22 (Document bearing production Nos.
23 Apollo 679 through 687 inclusive, marked
24 Exhibit 19 for identification as of this
25 date.)

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2 Q. Do you recognize those?

3 A. Yes.

4 Q. What are they?

5 A. These appear to be the invoices for the
6 accounts that were in the one of the files that was
7 sent by Bank of America.

8 Q. What do you mean by files?

9 A. Well, one of the criteria for the
10 recovery for settlement offers, recovery accounts
11 that were eligible for settlement offers and
12 eligible for different monthly payments and
13 different options.

14 So the Apollo system, the person logs
15 in. Performs a decision. Determines that they're
16 eligible to have different settlement options
17 presented to them that were contained in a file that
18 was sent to us by Bank of America on a monthly,
19 monthly basis, I believe. These are the -- this
20 is -- these are the bills for the accounts that were
21 in those files that paid. That entered into a
22 settlement and then made payments.